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COUNSEL FOR HENRY S. MILLER COMMERCIAL, LLC

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	
HENRY S. MILLER COMMERCIAL, LLC,	§	CASE NO. 09-34422-HDH-7
	§	
Alleged Debtor.	§	CHAPTER 7 CASE
	§	

ANSWER, SUBJECT TO MOTION TO DISMISS, TO INVOLUNTARY PETITION

TO THE HONORABLE STACEY G. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE:

Henry S. Miller Commercial, LLC (“HSMC” or “Alleged Debtor”), files this Answer, Subject to Motion to Dismiss to Involuntary Petition¹ (the “Answer”) and respectfully represents the following:

1. HSMC is part of the largest independent real estate services firm in Texas. In 2006, Dallas Clubview Gardens, L.P., Woodside Apartments, L.P. and BNC Lake Jackson Village, L.P., (collectively, the “Appellees”) along with 6 other related parties, filed a state court

¹ Prior to the filing of this response, HSMC filed its Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(1) (Docket # 5)(the “Motion”). HSMC respectfully requests the merits of the Motion be adjudicated prior to the claims and defenses set forth in this Answer. This Answer is submitted in the alternative and subject to dismissal, and nothing contained herein shall be construed as a waiver of HSMC’s rights under the Motion.

action against Henry S. Miller Commercial Company (“HSM Commercial”) and Steven Defterios (“Defterios”) in the District Court of Dallas County, Texas, 14th Judicial District, Cause 06-12902-A (hereinafter referred to as “the Lawsuit”). In the Lawsuit, the Appellees alleged various negligence and fraud claims pertaining to real estate transactions with damages allegedly exceeding \$30 million.

2. On or about December 1, 2008, the court rendered a judgment against HSM Commercial and Defterios, jointly and severally, aggregating \$8,918,719.99 (the “Judgment”). HSM Commercial and Defterios immediately perfected their right to appeal the Judgment by filing a notice of appeal (No. 5-08-01726-cv) which is presently pending in the Court of Appeals for the Fifth District of Texas at Dallas. Briefing is complete with the exception of Appellant’s Reply Brief and the parties have requested oral argument that, to date, has not been scheduled. Mediation in the appeal is set for August 5, 2009.

3. On or about July 7, 2009, the Appellees commenced this involuntary bankruptcy case (the “Case”) against HSMC by filing the *Involuntary Petition* (Docket No. 1) (the “Involuntary Petition”).

4. In response to the Appellees’ allegation that they are proper petitioning creditors, HSMC denies same and would show that it believes that the Appellees do not qualify as petitioning creditors pursuant to section 303 of the Bankruptcy Code. The Judgment and underlying claims of the Appellees are subject to a bona fide dispute. Appellees are alter egos of one another and/or another control party, such that they are only one creditor.

5. In response to the Appellees’ allegation that HSMC is a person against whom relief may be granted, HSMC denies same and avers that while it may be eligible for relief, it

does not wish to invoke bankruptcy jurisdiction at this time and therefore contests the allegations.

6. In response to the allegation that HSMC is generally not paying its debts as they come due, unless such debts are disputed, HSMC denies same and would show that:

- a. Debts are generally being paid except the Judgment held by the Appellees, and
- b. The Appellees' Judgment is contested, subject to a bona fide dispute and currently on appeal.

7. The Bankruptcy Court should not act for what is essentially a single disputed creditor as in the instant Case. This is essentially a two-party dispute where the Appellees have unilaterally invoked this Court's jurisdiction to gain assistance in collecting on the Judgment. The Appellees have adequate remedies at state law.

8. Further, this Court should abstain under 11 U.S.C. § 305 as dismissal of the involuntary case is in the best interest of the alleged debtor and all creditors.

9. Finally, the Involuntary Petition was filed in bad faith. The Appellees, through their "President of Manager Member of its General Partner" and under penalty of perjury, allege in the Involuntary Petition that HSMC is generally not paying its debts as they become due. That sworn statement is untrue, and it appears to have been made by the Appellees with either little or no investigation into HSMC's financial condition, with disregard to the truth or with intent to mislead this Court. Therefore, pursuant to 11 U.S.C. § 303(i), the Court should grant judgment against the Appellees in favor of the alleged debtor for costs and/or reasonable attorneys' fees, and award proximate and punitive damages caused by the filing of the involuntary petition.

WHEREFORE, HSMC prays the Involuntary Petition be dismissed and for such other and further relief to which it may be entitled.

Dated: August 24, 2009

Respectfully submitted,

By: /s/ Rakhee V. Patel
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on August 24, 2009 I caused to be served the foregoing pleading upon the parties listed below via the Court's electronic transmission facilities and/or United States mail, first class delivery.

Howard Marc Spector
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/s/ Rakhee V. Patel
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